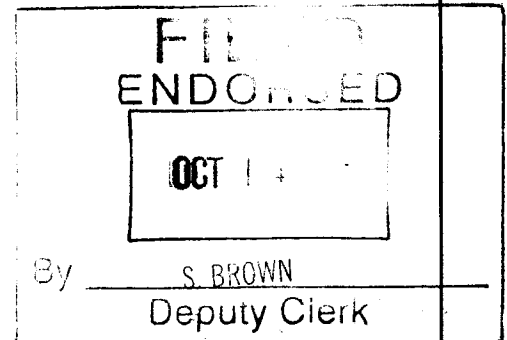


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6
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SACRAMENTO
9

10 TEACHERS' RETIREMENT BOARD,
11 AS MANAGER OF THE CALIFORNIA STATE
TEACHERS' RETIREMENT SYSTEM; GARY
12 LYNES, KAREN A. RUSSELL AND CAROLYN
WIDENER, AS MEMBERS OF THE
13 CALIFORNIA STATE TEACHERS'
RETIREMENT SYSTEM,
14

NO.

03CS01503

**VERIFIED PETITION FOR WRIT
OF MANDATE; COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

15
16 Petitioners/Plaintiffs,

17 vs.

18 STEVE PEACE, DIRECTOR OF CALIFORNIA
19 DEPARTMENT OF FINANCE, and
STEVE WESTLY, CALIFORNIA STATE
20 CONTROLLER,
21

22 Respondents/Defendants.
23
24

25 Petitioners/Plaintiffs, Teachers' Retirement Board (the "Board"), as manager of the
26 California State Teachers' Retirement System ("CalSTRS"), and Gary Lynes, Karen A. Russell,
27 and Carolyn Widener, as members of CalSTRS (Individually as Petitioner and collectively, the
28 "Petitioners") allege as follows:

**VERIFIED PETITION FOR WRIT OF MANDATE;
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

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1 reduce the transfer for the fiscal year commencing July 1, 2003 by \$500 million, and; 4) an
2 injunction against continued enforcement of SB 20 by Respondents. Absent a determination
3 from this Court that the reduction of the continuing appropriation set forth in section 22954
4 violates the provisions of Article 1, section 10 of the United States Constitution, and Article I,
5 section 9 and Article XVI, section 17, of the California Constitution, the State Controller will
6 not transfer \$558,867,986 from the General Fund to the SBMA as required by law. The failure
7 of the State Controller to transfer \$558,867,986 to the SBMA impairs the contractual rights of
8 beneficiaries of the Teachers' Retirement Fund to receive benefits from the SBMA and
9 interferes with the duty of the Teachers' Retirement Board to administer the Fund in accordance
10 with the fiduciary duties imposed upon the Board pursuant to Article XVI, section 17, of the
11 California Constitution. Absent a decision from this Court that the amendments to section
12 22954 enacted by SB 20 are invalid, the contractual rights of Teachers' Retirement Fund
13 beneficiaries to the statutory purchasing power maintenance benefits funded by the SBMA will
14 depend upon subsequent appropriations by the Legislature and certifications made by
15 Respondent Director of Finance rather than transfers pursuant to the continuing appropriation
16 for which the beneficiaries exchanged their labor.

17 18 **PARTIES**

19 3. The Board is charged by law with management of CalSTRS, a public entity
20 created by, and organized under, section 22000 *et seq.* CalSTRS serves approximately 715,000
21 members and benefits recipients by providing retirement, disability, and survivor benefits to
22 California's teachers. It is the third largest public pension fund in the United States and the
23 fifth largest in the world. One of the accounts in the Teachers' Retirement Fund administered
24 by Petitioner is the SBMA, which provides for certain supplemental payments when the
25 beneficiary's benefits fall below 80% of their original purchasing power. (Ed. Code § 22954.)
26 SBMA is funded by a continuing statutory appropriation from the General Fund set forth in
27 section 22954. This petition concerns the Legislature's recent enactment of SB 20, which
28 amends section 22954 to reduce by \$500 million the existing statutory obligation to fund SBMA

1 that would otherwise apply to fiscal year 2003-04. Petitioner brings this action pursuant to the
2 Board's fiduciary obligations to operate the system for the exclusive benefit of employees and
3 their beneficiaries, as set forth in Article XVI, section 17 of the California Constitution.

4 Petitioner also brings this action pursuant to the authority granted by section 22214 to take
5 action it deems necessary to ensure the continued rights of CalSTRS members or beneficiaries
6 to receive monthly payments provided by law.

7 4. Petitioner/Plaintiff Gary Lynes is a teacher and member of CalSTRS who is
8 presently contributing to the Teachers' Retirement Fund and upon retirement is entitled to
9 receive benefits from the fund provided by law, including those payments to retired teachers in
10 amounts necessary to ensure that retirement benefits provide at least 80% of the purchasing
11 power of the benefit received at the time of retirement. Petitioner/Plaintiff Lynes has an interest
12 in assuring that there are sufficient assets in the SBMA to provide this benefit upon retirement
13 and for its duration. Petitioner/Plaintiff Lynes is a member and Chairperson of the Teachers'
14 Retirement Board. He brings this petition as a member and Chairperson of the Board and in his
15 individual capacity.

16 5. Petitioner/Plaintiff Karen A. Russell, is a retired teacher currently receiving
17 benefits from the Teachers' Retirement Fund and is entitled to receive payments from the
18 SBMA in accordance with law. Petitioner/Plaintiff Russell retired in 2001. She has an interest
19 in assuring that there are sufficient funds in the SBMA to ensure that her retirement benefits will
20 retain 80 percent of the purchasing power possessed at the time of her retirement.
21 Petitioner/Plaintiff Russell is a member and Vice Chair of the Teachers' Retirement Board. She
22 brings this petition as a member of the Board and in her individual capacity.

23 6. Petitioner/Plaintiff Carolyn A. Widener is a teacher and member of CalSTRS
24 who is presently contributing to the Teachers' Retirement Fund and upon retirement is entitled
25 to receive benefits from the fund provided by law, including those payments to retired teachers
26 in amounts necessary to ensure that retirement benefits provide at least 80% of the purchasing
27 power of the benefit received at the time of retirement. Petitioner/Plaintiff Widener has an
28 interest in assuring that there are sufficient assets in the SBMA to provide this benefit upon

1 retirement and for its duration. Petitioner/Plaintiff Widener is a member of the Teachers'
2 Retirement Board. She brings this petition as a member of the Board and in her individual
3 capacity.

4 7. Respondent/Defendant Steve Peace is the Director of Finance for the State of
5 California. As Director of Finance, Respondent/Defendant Peace has general powers of
6 supervision of all matters concerning the financial policies of the State and the power and
7 authority to take action to conserve the financial interests of the State and control the
8 expenditure of State money. In that capacity Respondent/Defendant Peace has an interest in the
9 implementation of provisions of SB 20. Respondent/Defendant Peace has a direct involvement
10 in the administration of provisions of SB 20, including receipt of reports prepared by Petitioner
11 Teachers' Retirement Board pursuant to section 22954.1 (a) and certification of amounts to be
12 transferred by the Controller to the SBMA in accordance with the provisions of section
13 22954.1(c). Without certification by Respondent/Defendant Peace, no funds appropriated by SB
14 20 may be made available for transfer to the SBMA. Respondent/Defendant Peace contends
15 that SB 20 does not impair vested contractual rights of beneficiaries and members of CalSTRS.
16 Respondent/Defendant Peace is sued in his official capacity only. References to Respondent
17 Peace or Respondent Director of Finance are to Respondent/Defendant Steve Peace.

18 8. Respondent/Defendant Steve Westly is the State Controller of the State of
19 California and is required by section 22954 to annually transfer funds continuously appropriated
20 from the General Fund to the SBMA in the Teachers' Retirement Fund. Respondent/Defendant
21 Westly was required by law to transfer on July 1, 2003, an amount equal to 2.5 percent of the
22 total of the creditable compensation of the fiscal year ending in the immediate preceding
23 calendar year upon which members' contributions are based. For fiscal year 2003-04, absent the
24 impact of SB 20, that amount is \$558,867,986. SB 20 directs Respondent/Defendant Westly
25 reduce the amount to be transferred pursuant the continuing appropriation set forth in section
26 22954 by \$500,000,000, for fiscal year 2003-04. Respondent/Defendant Westly is sued in his
27 official capacity as State Controller only. References to Respondent Westly or Respondent
28 State Controller are to Respondent/Defendant Steve Westly.

1 VENUE

2 9. Venue is proper in the County of Sacramento pursuant to Code of Civil
3 Procedure section 401.

4
5 GENERAL ALLEGATIONS

6 10. CalSTRS has its roots in the Public School Teachers' Retirement Salary Fund
7 established in the Department of Education in 1913. (Stats. 1913, ch. 694.) CalSTRS succeeds
8 to that Fund, and continues its purpose to provide California teachers and other public school
9 teaching professionals with a secure financial future during their retirement and to provide an
10 incentive for them to stay in the teaching profession for their entire working careers. CalSTRS
11 currently has over 715,000 members and benefit recipients. It is the largest public teachers'
12 pension organization in the United States. It is the third largest public pension plan in the
13 United States. While the market value of Teachers' Retirement Fund varies from day to day, it
14 has approximately \$100 billion in assets, and is actuarially funded to provide its members with
15 the benefits provided by law, which allows the CalSTRS retirement program to be characterized
16 as a defined benefit program.

17 11. Members in CalSTRS, upon retirement, are entitled to benefits based on years of
18 service and salary received as defined by statute. The Teachers' Retirement Fund, from which
19 benefits are paid, is funded by a combination of contributions from members and their
20 employers, transfers from the State General Fund, earnings of Fund investments, and transfers
21 made pursuant to other statutory provisions.

22
23 HISTORY OF ALLOWANCE INCREASES

24 12. Under the Defined Benefits Program (DB Program), allowances are increased by
25 an annual benefit improvement factor equal to two (2) percent of the initial allowance payable.
26 Additional increases have been paid to recipients on an ad-hoc basis. The term "ad hoc
27 increase" refers to a permanent increase in the allowance that is calculated once and paid as long
28 as the allowance is payable. The design of ad hoc allowance increases has varied. Specified

1 percentage increases in the first \$300 of allowance were applied as of July 1 of 1967, 1972,
2 1976 and 1978.

3 13. The minimum unmodified allowance was increased as of July 1, 1972, October
4 1, 1980, and September 1, 1981. This "minimum guarantee" is the lowest amount of monthly
5 allowance payable for each year of service credit earned by the member. In 1980, the minimum
6 guarantee was increased to \$16 per month for each year of service credit; and, in 1981, to \$18
7 per month for each year of service credit.

8 14. Effective January 1, 2000, certain benefit recipients received allowance increases
9 to bring total annual DB Program benefit payments to specified minimum levels, pursuant to SB
10 713 (Stats. 1999, ch. 632). These minimum benefit levels were based on the member's credited
11 service under the DB Program at the time of the member's retirement, disability or death. These
12 increases were based on a graded scale beginning at \$15,000 with 20 years of service credit,
13 increasing \$500 for each additional year of credited service, in one-year increments, to \$20,000
14 with 30 or more years of service credit. These increases receive the annual two (2) percent
15 benefit improvement beginning September 1, 2001, and are measured for purchasing power
16 based on the January 1, 2000 effective date.

17 15. Effective January 1, 2001, an additional group of benefit recipients received
18 allowance increases to bring total annual DB Program benefit payments to the specified
19 minimum levels, pursuant to SB 1505 (Stats. 2000, ch. 1026). These minimum benefit levels
20 are based on the member's credited service under the DB Program at the time of the member's
21 retirement, disability, or death. These increases are based on the same graded scale as those
22 effective January 1, 2000 -- beginning at \$15,000 with 20 years of service credit, increasing
23 \$500 for each additional year of credited service, in one-year increments, to \$20,000 with 30 or
24 more years of service credit. These increases will receive the annual two (2) percent benefit
25 improvement beginning September 1, 2002, and will be measured for purchasing power based
26 on the January 1, 2001 effective date.

27 16. AB 429 (Stats. 2000, ch. 1027) provided an additional ad hoc increase for all DB
28 Program benefit recipients who had begun receiving a benefit prior to January 1, 1998. The ad

1 hoc increase ranged from 1 percent for those who began receiving a benefit in 1997 to 6 percent
2 for those who began receiving a benefit prior to 1975. The ad hoc increase is not applied to the
3 minimum allowance increases provided in either 2000 or 2001. These increases will receive the
4 annual 2 percent benefit improvement beginning September 1, 2002, and will be measured for
5 purchasing power based on the January 1, 2001 effective date.

6 17. The first allowance for a purchasing power increase was applied as of January 1,
7 1980. The DB Program allowance "purchasing power" is measured by changes in the California
8 Consumer Price Index (CCPI) and reflects changes in the cost-of-living since a benefit became
9 effective. The purchasing power concept attempts to maintain the allowance at a specified
10 percentage of the purchasing power of the initial allowance.

11 18. In addition to ad hoc allowance increases, which permanently increase the
12 allowance, annual supplemental benefit payments (payable in quarterly installments) have been
13 implemented. The supplemental benefit payments for any one year were at one time dependent
14 upon the money available for that year. Beginning July 1, 1983, an appropriation from the
15 General Fund equal to five (5) percent of the average increase in the statewide payroll for
16 certificated school employees over the previous three years was included in the Governor's
17 Budget for the Retirees' Purchasing Power Protection Account. The proceeds of the account
18 were distributed in supplemental payments to bring those allowances with the lowest purchasing
19 power to a common minimum purchasing power level.

20 19. Since July 1, 1984, revenue derived from the use of School Lands has been
21 provided to CalSTRS each year for quarterly supplemental benefit payments. The income
22 derived from School Lands must be prorated among all benefit recipients whose allowances,
23 after application of the annual two (2) percent benefit improvement, are below a certain percent
24 of the purchasing power of their initial allowances. From July 1, 1984 through December 31,
25 2001, the School Lands income was prorated between those whose allowances were below 75
26 percent. Since January 1, 2002, the School Lands income has been prorated between those
27 whose allowances were below 80 percent.

1 20. Beginning July 1, 1990 and each July 1 thereafter, an amount equal to a specified
2 percentage of total member salaries has been transferred from the General Fund to the
3 Supplemental Benefit Maintenance Account (SBMA) in the Teachers' Retirement Fund. This
4 replaced the appropriation that had been made to the Retirees' Purchasing Power Protection
5 Account. The SBMA operates as a reserve account. Quarterly payments are made to
6 beneficiaries from that account in amounts that are necessary to annually restore the purchasing
7 power of all allowances to a specified minimum of the purchasing power of the initial
8 allowance. The amount of the supplemental payment is equal to the amount needed to restore
9 the current allowance to the minimum level of purchasing power, after any supplemental
10 payment was made from School Lands funds.

11 21. Until April 1, 1998, the supplemental benefit payments restored allowances to
12 68.2 percent of the purchasing power of the initial allowance. SB 1026 (Stats. 1997, ch. 939),
13 effective January 1, 1998, increased the supplemental benefit to a minimum of 75 percent of the
14 purchasing power of the initial allowance. Partial funding for this increase was provided as a
15 result of the federal sale of the Elk Hills Naval Petroleum Reserve and the federal payment of
16 nine (9) percent of the proceeds of that sale to CalSTRS. This federal payment represents the
17 School Lands portion of this sale, which will be received by CalSTRS over a period of seven
18 years. SB 1026 also authorized the CalSTRS Board to transfer funds from the Teachers'
19 Retirement Fund, increase employer contributions, reduce the distribution below 75 percent, or
20 to terminate distributions if the resources in the SBMA are insufficient to maintain the 75
21 percent purchasing power payments.

22 22. AB 135 (Stats. 2001, ch. 840), effective with the 2001-02 fiscal year, increased
23 the supplemental benefit to a minimum of 80 percent of the purchasing power of the initial
24 allowance, continuing in place the Board's authority to take the actions outlined in the preceding
25 paragraph if the resources in the SBMA are insufficient to maintain 80 percent purchasing
26 power payments.

27 **THE CONTINUOUS APPROPRIATION**

28 23. Funding for the SBMA was significantly changed in 1998. AB 1102 (Stats.

1 1998, ch. 1006) continuously appropriates funds for an annual transfer from the General Fund to
2 the SBMA equal to 2.5 percent of the total creditable compensation of the immediately
3 preceding calendar year, effective July 1, 1999. This provision established the supplemental
4 payments as a vested benefit pursuant to a contractually enforceable obligation to make the
5 annual transfer from the General Fund to the SBMA. AB 1102 changed the funding for SBMA
6 from an annual budget appropriation to a continuous appropriation in order to provide a
7 continuous source of revenue for purposes of making supplemental payments under section
8 24415.

9 24. AB 1102 was a part of a package of changes to the Teachers' Retirement Law
10 negotiated between the Legislature, the Governor, and the Board in the 1998 legislative session.
11 In addition to AB 1102, this package included AB 2804 (Stats. 1998, ch. 967), which
12 permanently reduced the State's contribution to the Defined Benefit Program.

13 25. At the time of enactment, the Legislature was advised that the combination of
14 bills would save the State General Fund \$577 million in fiscal year 1998-1999, \$158 million in
15 fiscal year 1999-2000, and \$213 million in fiscal year 2000-01. No estimates were given to the
16 Legislature for General Fund savings in subsequent fiscal years. In exchange for those savings,
17 CalSTRS beneficiaries received the vested contractual rights set forth in AB 1102 by
18 amendment to sections 22954 and 24415.

19 26. AB 2700 (Stats. 2000, ch. 1021) revised the annual transfer from the General
20 Fund from 2.5 percent of the total creditable compensation of the immediately preceding
21 calendar year to 2.5 percent of the total creditable compensation of the fiscal year ending in the
22 immediately preceding calendar year, effective July 1, 2003.

23 27. SBMA is therefore currently funded by annual transfers from an continuous
24 appropriation from the General Fund provided in section 22954. Prior to amendment by SB 20,
25 that section provided, in relevant part:

26 (a) Notwithstanding Section 13340 of the Government Code, commencing July
27 1, 1999, a continuous appropriation is hereby annually made from the General
28 Fund to the Controller, pursuant to this section for transfer to the Supplemental
Benefit Maintenance Account in the Teachers' Retirement Fund. The total
amount of the appropriation for each year shall be equal to 2.5 percent of the total

1 of the creditable compensation of the immediately preceding calendar year up on
2 which members' contributions are based for purposes of funding the
supplemental payments authorized by Section 24415.

3 (b) The board may deduct from the annual appropriation made pursuant to this
4 section an amount necessary for the administrative expenses of Section 24415.

5 (c) It is the intent of the Legislature in enacting this section to establish the
6 supplemental payments pursuant to Section 24115 as vested benefits pursuant to
7 a contractually enforceable promise to make annual contributions from the
General Fund to the Supplemental Benefit Maintenance Account in the Teachers'
Retirement Fund in order to provide a continuous annual source of revenue for
the purposes of making the supplemental payments under Section 24415.

8 28. By enactment of section 22954, the Legislature intended to provide a continuous
9 annual source of revenue for the purposes of making the supplemental payments provided by
10 section 24415, and to establish the supplemental payments provided by section 24415 as vested
11 benefits pursuant to a contractually enforceable promise to make annual contributions from the
12 General Fund to the Supplemental Benefit Maintenance Account. (Ed. Code § 22954(c).)

13 29. Under current law, the 2003-04 SBMA appropriation under section 22954 would
14 be 2.5 percent of the creditable compensation paid to members during 2001-02, or a total of
15 \$558,867,986, without the reduction set forth in SB 20.

16 30. Funds in the SBMA are credited with interest, based on the actuarially assumed
17 rate of investment earnings of the Defined Benefit Program. Based on current assumptions
18 adopted by the Board in 2000, the SBMA is currently credited with 8 percent annual interest.
19 (Ed. Code § 22216.)

20 31. Section 24415 provides that the supplemental payments authorized by that
21 section are vested "...up to the amount payable as a result of the annual appropriation made
22 pursuant to section 22954."

23 32. If there are insufficient funds to provide payments up to 80 percent of purchasing
24 power after the payments provided in section 22954 have been made, section 24416 allows the
25 Board to consider the following options:

26 (a) If the board determines by June 30 of the then current fiscal year that the
27 Supplemental Benefit Maintenance Account will not have sufficient funds to
28 provide purchasing power of up to 80 percent for the subsequent fiscal year, the
board, for that year, may do either, or a combination of the following:

1 (1) Increase the employer contribution rate commencing in the next fiscal
2 year by an amount that would provide sufficient funds for no more than
3 the estimated difference between the funds in the Supplemental Benefit
4 Maintenance Account and the amount needed to pay the benefit level
5 specified by the board, provided the benefit level is no more than 80
6 percent. Notwithstanding any other provision of this part, the increase in
7 the employer contribution rate shall only become operative if the increase
8 is approved or authorized in the Budget Act.

9 (2) Reduce the supplemental benefit payment for the subsequent fiscal
10 year to the amount that can be funded by the available funds in the
11 Supplemental Benefit Maintenance Account.

12 (b) If the board finds that there is no unfunded obligation, as determined by the
13 board's professional consulting actuary and affirmed by the Director of Finance,
14 then in addition to the authority pursuant to subdivision (a), the board may
15 transfer to an auxiliary Supplemental Benefit Maintenance Account, from any
16 funds that are in excess of the amount needed to fund fully the benefits for which
17 the Teachers' Retirement Fund is liable, an amount that would provide sufficient
18 funds for no more than the estimated difference between the funds in the
19 Supplemental Benefit Maintenance Account and the amount needed to pay the
20 benefit level specified by the board, provided the benefit level is no more than 80
21 percent.

22 (c) If the board increases the employer contribution rate pursuant to paragraph (1)
23 of subdivision (a), the increase between the current fiscal year contribution rate
24 and the contribution rate in the next fiscal year, shall not exceed one-quarter of 1
25 percent of the creditable compensation upon which contributions are based.

26 **ENACTMENT OF SB 20**

27 33. In 2002, the Governor proposed to the Legislature that the State's obligation to
28 transfer funds to the SBMA for fiscal year 2003-04 be reduced by \$500 million to satisfy other
General Fund needs. CalSTRS was not consulted prior to this proposal being made. A copy of
the legislation to implement the Governor's proposal was obtained by CalSTRS in a "pre-
introduction" format. The language was reviewed by Mark Johnson, Consulting Actuary to the
Board, and Ian Lanoff, Fiduciary Counsel to the Board. Actuary Johnson evaluated the effect
upon the SBMA and concluded that for the proposal to be actuarially sound it must not cause
any diminution of the financial status of the SBMA. Actuary Johnson concluded that the
proposal was not actuarially sound and that SBMA beneficiaries may be left in worse financial
position because of the diversion of \$500 million as proposed. Fiduciary Counsel Lanoff
advised the Board of its fiduciary duties concerning the proposal.

1 34. On January 23, 2003, the Board met to consider the proposal and the opinions of
2 the Consulting Actuary and Fiduciary Counsel. Board Staff provided an analysis to the Board at
3 its public session. The Board determined to oppose the proposal in the format presented unless
4 it was amended to deal with the issues raised by staff and the Consulting Actuary. Between
5 January 23, 2003 and March 25, 2003, Board staff met with staff of Respondent Peace to
6 communicate the concerns of the Board and to propose alternatives to the proposal. Alternative
7 proposals were rejected by Respondent Peace.

8 35. The proposal received and evaluated by CalSTRS in pre-introduction format was
9 amended into SB 20 and was subsequently considered by the Legislature.

10 36. The Board, by letter dated March 25, 2003, notified Senator Chesbro, Chair of
11 the Budget and Fiscal Affairs Committee, as well as other committees that would consider the
12 legislation, that SB 20 was not actuarially sound and that the loss of the \$500 million, as then
13 proposed, would reduce the length of time that CalSTRS members and beneficiaries would
14 receive vested benefits. The Legislature was advised that "Over 63,000 retired CalSTRS
15 members who retired prior to 1986 receive quarterly supplemental benefit payments to offset the
16 effects of inflation on purchasing power. These payments are needed to maintain a consistent
17 standard of living after retirement. Implementation of SB20 will jeopardize the capability of the
18 System to make these payments into the future."

19 37. Pursuant to section 24400, the Board is required to report to the Governor and
20 the Legislature concerning the erosion of purchasing power of the state teachers' retirement
21 allowances. On April 1, 2003, that report was provided as required. The report provides the
22 Governor and the Legislature with information concerning the current purchasing power of the
23 Defined Benefit Program allowances, allowance increases granted to date, the amount of
24 supplementary increases needed to restore current allowances to a minimum of 80 percent of
25 purchasing power and other aspect of the program to provide maintenance power. It advises the
26 Legislature and the Governor of the amounts needed during the current fiscal climate to
27 maintain 80 percent purchasing power for benefits. The amount required for benefits to be paid
28 to 63,303 retirees in fiscal year 2004 alone, is \$264,118,029. The report reminded the

1 Legislature and the Governor that Chapter 1006, Statutes of 1998, amended section 22954 to
2 continuously appropriate funds sufficient for an annual transfer equal to 2.5 percent of the total
3 creditable compensation of the immediately preceding calendar year, and that this provision
4 established the supplemental payments as a vested benefit and the transfer as a contractual
5 obligation.

6 38. After SB 20 was passed by both houses of the Legislature and sent to the
7 Governor for signature, the Governor was advised by the California Teachers Association that
8 63,000 educators, mostly retired elderly women, would be impacted by SB 20. The Governor
9 was advised that SB 20 did not contain a guaranteed payback, was actuarially unsound, and
10 contrary to *CTA v. Cory*. The Governor was requested to veto SB 20.

11 39. On May 5, 2003, the Governor approved SB 20, and it was filed with the
12 Secretary of State on that date. As urgency legislation, it became effective on May 5, 2003. SB
13 20 amends section 22954 to reduce the amount of the State's 2003-04 contribution from the
14 General Fund to the SBMA by \$500 million, from \$558,867,986 that would otherwise be
15 transferred to \$58,867,986. Specifically, SB 20 adds the following language to subdivision (b)
16 of section 22954:

17 However, for the 2003-2004 fiscal year only, that appropriation is
18 reduced by five hundred million dollars (\$500,000,000).

19 40. The Governor, upon the occasion of signing SB 20, issued a letter to members of
20 the Legislature explaining his reasons for signing it and its impact on the fiscal condition of the
21 state. In his signing message for SB 20, Governor Gray Davis stated that he was signing SB 20
22 "because it is an important step to balancing the budget" and that SB 20 was part of a package
23 of "cost-savings measures."

24 41. On June 20, 2003, the State Controller was notified by CalSTRS that the amount
25 to be transferred to the SBMA on July 1, 2003, after the reduction set forth in SB 20, was
26 \$58,867,986.

27 42. On June 27, 2003, the State Controller was notified that the Consulting Actuary
28 for the Board had advised the Board that SB 20 was not actuarially sound and may lead to a

1 diminution in financial security for defined benefits program and may result in lower purchasing
2 power payments to future retirees and beneficiaries and that fiduciary counsel had advised the
3 Board that SB 20 is constitutionally infirm and cannot be implemented by the Board consistent
4 with its fiduciary responsibilities. The Controller was requested to transfer the full amount
5 required by section 22954 (i.e., \$558,867,986), without regard to the provisions of SB 20.

6 43. On July 3, 2003, Respondent Westly notified CalSTRS that he was legally
7 required to enforce the provisions of SB20.

8 **THE BOARD'S FIDUCIARY RESPONSIBILITIES**

9 44. SB 20 did not amend subdivision (c) of section 22954, leaving intact the intent of
10 the Legislature to establish benefits provided by section 24415 as "vested" and the
11 appropriations made by section 22954 as a "contractually enforceable promise" to make
12 "annual contributions" to the SBMA.

13 45. SB 20 recognizes that the Legislature cannot reduce the continuous appropriation
14 without breaching the "contractually enforceable promise" to fund "vested" benefits provided by
15 section 24415, as it purports to provide a method of repayment. However, it provides only for
16 the possibility, but not certainty, of repayment. If the Board determines that the money is
17 needed to meet the SBMA's obligations to beneficiaries before June 30, 2036, the amount
18 necessary to meet those obligations is to be transferred from State to the SBMA on July 30 of
19 the year following the certification by the Board that it is needed.

20 46. Although SB 20 "appropriates" funds for repayment if necessary to meet
21 SBMA's obligations, such appropriation makes funds available for transfer from the general
22 fund to the SBMA only upon the certification of the Director of Finance. No such requirement
23 existed prior to the enactment of SB 20. There is no certainty that such action will be taken if
24 the needs of SBMA coincide with another fiscal crisis such as the one the State is currently
25 experiencing, or if the Legislature finds that other fiscal priorities preclude payment. In
26 addition, the total amount withheld is not returned upon a determination that the funds are
27 needed to meet SBMA's obligations; only such funds as are necessary to meet the obligations
28 found by the actuary are to be transferred. Thus, the SBMA may be deprived of some or all of

1 the annual appropriation.

2 47. Under SB 20, any amounts not repaid to SBMA as of the year 2036 are
3 completely unrecoverable, even if SBMA becomes insufficient after that time. Authorization to
4 repay such amounts is not contained in SB 20 and depends completely upon future legislation
5 and appropriations.

6 48. Based on the current assumed rate of return of 8 percent, the actual loss to the
7 SBMA in 2036 dollars, if the money is not repaid, is approximately \$6.3 billion (assuming 8
8 percent earnings compounded for 33 years).

9 49. SB 20 provides no new or different benefits to CalSTRS members to offset the
10 loss of the \$500 million from SBMA.

11 50. The Consulting Actuary to the Board has evaluated the effect of SB 20 upon the
12 SBMA and has concluded that for the legislation to be actuarially sound it must not cause any
13 diminution of the financial status of the SBMA. The Consulting Actuary has concluded that SB
14 20 is not actuarially sound, and that SBMA beneficiaries "may be left in worse financial
15 position because of the diversion of the \$500 million" primarily because of the time limit for
16 making up the diverted contribution with interest and the absence of full reimbursement of the
17 reduction imposed by SB 20.

18 51. The effects of SB 20 have had an impact upon the administration of the Fund by
19 Petitioner Board. On August 22, 2003, Standard & Poor's Rating Services downgraded
20 CalSTRS credit rating from "AAA" to "AA+" based, in part, on "the failure by the State to
21 make its full contribution payment to CalSTRS supplemental payment to the systems main
22 defined benefit program." While the full effect of this downgrade is not known, it is a factor
23 that will be considered by those in financial markets who rely upon the STRS credit rating in
24 investment decisions.

25 52. At the General Election held on November 3, 1992, the voters enacted Proposition
26 162, which amended Article XVI, section 17, of the California Constitution. One reason for the
27 enactment of Proposition 162 was that "Politicians have undermined the dignity and security of
28 all citizens who depend on pension benefits for their retirement by repeatedly raiding their

1 pension funds.” (Section 1(c), California Pension Protection Act of 1992 § 2(c). To that end,
2 Proposition 162 was intended to prevent the diversion of public pension funds to other uses.
3 (Section 3(c), (d), California Pension Protection Act of 1992.)

4 53. Proposition 162 also vests plenary authority and fiduciary responsibility over the
5 assets of the System which are held as “trust funds” in the Board. Petitioner Board, in
6 recognition of its fiduciary duties, has consulted with Fiduciary Counsel. It has been advised
7 that the Board has a fiduciary duty to act solely in the interest of CalSTRS participants and
8 beneficiaries and that it cannot implement SB 20 unless it is actuarially sound. The Board has
9 been advised by Fiduciary Counsel that acceptance of the provisions of SB 20 is inconsistent
10 with its fiduciary obligations to CalSTRS participants and beneficiaries, as the Board’s
11 Consulting Actuary has concluded that it is not actuarially sound.

12
13 **FIRST CAUSE OF ACTION**
14 **WRIT OF MANDATE**

15 **[Code of Civil Procedure § 1085]**

16 **[Unconstitutional Impairment of an Obligation of Contract]**

17 54. Petitioners incorporate paragraphs 1 through 51 of this Petition.

18 55. The rights of CalSTRS members and their beneficiaries to have the payments
19 made from the General Fund as provided in section 22954 are enforceable contractual rights.

20 56. The actions of the Legislature in withholding the State’s 2003-04 transfer of
21 \$558,867,986 from the General Fund to SBMA impairs the contractual rights of CalSTRS
22 members and their beneficiaries to that transfer.

23 57. The impairment of contract rights caused by the Legislature’s withholding of the
24 2003-04 payment of \$558,867,986 violates both Article I, section 9 of the California
25 Constitution and Article I, section 10 of the United States Constitution, both of which prohibit
26 such impairment.

27 58. Petitioner Board is beneficially interested in the outcome of this litigation as it is
28 constitutionally charged with protecting the assets of the Teacher’s Retirement System and

1 administering that System for the exclusive benefit of the members and their beneficiaries and
2 authorized by law to take that action it deems necessary to ensure the continued rights of
3 members or beneficiaries to receive monthly payments. (Ed. Code § 22214.).

4 59. Petitioners Lynes, Russell and Widener are beneficially interested in the outcome
5 of this litigation as they are teacher members of CalSTRS and entitled to SBMA benefits during
6 their retirement and may be left in worse financial position because of the diversion of
7 \$558,867,986 caused by the implementation of SB 20 and the impairments of the contractual
8 rights set forth in sections 24415 and 22954.

9 60. Petitioners have no plain, speedy, and adequate remedy at law.

10 61. Respondents have a clear, present, and ministerial duty to make the transfer from
11 the General Fund to SBMA required by section 22954 without regard to the provisions of SB
12 20.

13 62. Petitioners have necessarily engaged counsel to represent them in the
14 preparation and prosecution of this suit. The legal services rendered seek ensure that the
15 Teachers Retirement Fund is actuarially sound for the benefit of CalSTRS members and
16 beneficiaries. Such benefits will be derived through Petitioner's efforts. As such, Petitioners
17 request that the Court award reasonable attorneys' fees and costs upon entry of final judgment.

18
19 **SECOND CAUSE OF ACTION**
20 **WRIT OF MANDATE**

21 **[Code of Civil Procedure § 1085]**

22 **[Violation of Article XVI, section 17 of the California Constitution]**

23 63. Petitioners incorporate paragraphs 1 through 62 of this Petition.

24 64. SB 20 impermissibly interferes with Petitioner's authority to administer the
25 Teachers' Retirement System for the exclusive benefit of the members and their beneficiaries,
26 and to operate the System in such a way as to ensure payment of benefits to the members and
27 their beneficiaries, in violation of Article XVI, section 17, of the California Constitution.

28 65. The diversion of funds from SBMA caused by SB 20 violates the requirement of

Article XVI, section 17 of the California Constitution that the assets of the Teachers' Retirement System are trust funds and are to be held for the exclusive benefit of the members and their beneficiaries.

66. Petitioner Board is beneficially interested in the outcome of this litigation as it is constitutionally charged with protecting the assets of the Teacher's Retirement System and administering that System for the exclusive benefit of the members and their beneficiaries and authorized by law to take that action it deems necessary to ensure the continued rights of members or beneficiaries to receive monthly payments. (Ed. Code § 22214.).

67. Petitioners Lynes, Russell and Widener are beneficially interested in the outcome of this litigation as they are teacher members of the CalSTRS and entitled to SBMA benefits during their retirement and may be left in worse financial position because of the diversion of \$558,867,986 caused by the implementation of SB 20 and the impairments of the contractual rights set forth in sections 24415 and 22954.

68. Petitioners have no plain, speedy, and adequate remedy at law.

69. Respondents have a clear, present, and ministerial duty to make the transfer from the General Fund to SBMA required by section 22954 without regard to the provisions of SB 20.

THIRD CAUSE OF ACTION DECLARATORY RELIEF

[Code of Civil Procedure § 1060]

70. Petitioners incorporate paragraphs 1 through 69 of this Petition.

71. An actual, present controversy has arisen and now exists between the parties to this lawsuit concerning their respective rights and duties. Petitioners contend SB 20 violates the California Constitution and the U.S. Constitution as described above. Respondents dispute this contention and contend that their actions comply with the law or do not abuse their discretion under law.

72. Respondents contend that SB 20 must be enforced until a court determines that it

1 is not constitutional, as demonstrated by an exchange of letters between CalSTRS and the
2 Respondent Controller, whereby Respondent states his intent to implement SB 20 pending a
3 decision by a court as to whether or not it is constitutional.

4 73. Petitioners desire a judicial determination of their rights and a declaration of
5 whether SB20 violates the California Constitution or U.S. Constitution and whether the State
6 Controller should transfer \$558,867,986, plus interest since July 1, 2003, from the General
7 Fund to the SBMA as required under Section 22954, prior to its amendment by SB 20.

8 74. A judicial determination is necessary and proper at this time under the
9 circumstances in order to determine whether SB 20 is consistent with and to prevent the
10 improper diminution in the value of the Teacher's Retirement Fund.

11
12 **FOURTH CAUSE OF ACTION**
13 **INJUNCTIVE RELIEF**

14 **[Code of Civil Procedure § 526]**

15 75. Petitioners incorporate paragraphs 1 through 74 of this Petition.

16 76. Petitioners will suffer immediate and irreparable injury unless the Court issues a
17 permanent injunction directing the Respondent Westly, as State Controller to transfer
18 \$558,867,986, plus interest, from the General Fund to the SMBA and enjoining Respondent
19 Peace, as Director of Finance for the State of California from taking any action that interferes
20 with the transfer of \$558,867,986 and/or from refusing to approve (to the extent any approval is
21 required) the transfer of \$558,867,986 to SMBA.

22 77. Petitioners will suffer irreparable harm by Respondents' implementation of an
23 unconstitutional statute as, absent intervention by this court, Respondents will continue to
24 implement the provisions of SB 20 notwithstanding that it violates Article I, section 10 of the
25 United States Constitution and Article I, section 9 and Article XVI, section 17 of the California
26 Constitution.

27 78. If injunctive relief is not granted, the contractual rights of CalSTRS members
28 and beneficiaries to receive benefits from the SMBA will be substantially impaired as SB 20 is

1 not actuarially sound and therefore abrogates the contractual obligation of the State as set forth
2 in section 22954 and 24415, as enacted by AB 2700 (Stats.200, ch. 1021). The Supplemental
3 Benefit Maintenance Account of the Teachers Retirement Fund will be rendered actuarially
4 unsound and impair the financial security of the SBMA program.

5 79. Without this Court requiring immediate transfer of the \$558,867,986 to the
6 Teachers Retirement Fund as required by 22954, the length of time that CalSTRS members and
7 beneficiaries will receive vested benefits will be reduced. Further, the funding available to
8 support payment of supplemental benefits to maintain CalSTRS members and beneficiaries'
9 purchasing power will be reduced. Moreover, the Board's management of the Teachers
10 Retirement Fund will be impaired as SB 20 usurps the Board's authority to make changes on
11 actuarial evaluations and forces the Board to manage the system in a manner that jeopardizes the
12 prompt and efficient delivery of future benefits to CalSTRS members and beneficiaries and risk
13 further erosion of the STRS Credit by credit rating organizations. A conditional promise of
14 partial payment in the future provides no assurance that the full amount withheld by Respondent
15 Controller, acting pursuant to SB 20, plus accrued interest, will be timely returned to the
16 Supplemental Benefits Maintenance Account in the amount required to pay those vested
17 benefits contractually obligated to be paid by CalSTRS to members and beneficiaries.

18 80. Issuance of a permanent Injunction by this court is necessary to permit the Board
19 to operate the System for the exclusive benefit of members and beneficiaries and to manage the
20 System to ensure that the continued rights of beneficiaries to receive monthly payments
21 provided by law will not be permanently impaired.

22 81. Issuance of a permanent injunction is necessary to prevent impairment of those
23 vested contractual rights conferred upon CalSTRS members and beneficiaries by sections 22954
24 and 24415.

25 82. Petitioners have no adequate remedy at law.

26 //

27 //

28 //

[illegible]

WHEREFORE, Petitioner prays that this Court:

A. Issue an alternative writ of mandate ordering Respondents not to enforce any provision of SB 20 or to show cause, at a time and place specified by this Court, why a writ should not issue;

B. Upon the return to the alternative writ, determine that SB 20 violates Article, 9, of the United States Constitution, Article I, section 9, and Article XVI, section 17, of the California Constitution and is unenforceable, and issue a peremptory writ of mandate directing Respondents not to enforce the provisions of SB 20 and directing Respondent [redacted] to transfer funds to the SBMA in accordance with the provisions of section 22954 as amended prior to amendment by SB 20, and without the approval or certification of Respondent [redacted] of Finance.;

C. Declare that SB 20 violates Article I, section 10, of the United States Constitution, Article I, section 9, and Article XVI, section 17, of the California Constitution and is unenforceable.

D. Enter a permanent injunction directing Respondent Controller, to transfer \$57,986, plus interest from July 1, 2003, from General Fund of the State of California to SMBA and/or enjoining Respondent Director of Finance, from taking any action that interferes with the transfer of \$558,867,986 and/or from refusing to approve (to the extent any action is required) the transfer of \$558,867,986 to SMBA.

E. Award Petitioners their costs incurred in this petition; and

///

1 F. Grant such further relief as may be just and proper.

2 Dated: October 14, 2003

3 Respectfully submitted,

4 OLSON, HAGEL, & FISHBURN, LLP

5 Deborah B. Caplan

6 N. Eugene Hill

7 Robert S. McWhorter

8 By: 

9 N. EUGENE HILL

10 *Attorneys For Petitioners/Plaintiffs*

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 12, 2003 at Orlando, Florida.

Gary Lynes
GARY LYNES